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**SUPREME COURT OF GRENADA AND
THE WEST INDIES ASSOCIATED STATES
(HIGH COURT OF JUSTICE)**

GRENADA

CLAIM NO. GDAHCV2003/0228

BETWEEN

**IN THE MATTER OF GRENADA INTERNATIONAL FINANCIAL SERVICE
AUTHORITY ACT 26 OF 1999**

AND

IN THE MATTER OF THE OFFSHORE BANKING ACT 39 OF 1996

AND

**IN THE MATTER OF AN APPLICATION BY BANK INTERNATIOANL
CROZIER LIMITED**

BETWEEN

**GRENVILLE WINSLOW PHILLIPS
CONTROLLER OF BANL CROZIER INTERNATIONAL LIMITED**

CLAIMANT

AND

**1. DARYL SANDS
OF PRICEWATERHOUSECOOPERS
CONTROLLER OF BANK CROZIER LIMITED**

**GARVEY LOUISON
LIQUIDATOR OF BANK CROZIER LIMITED (In Liquidation)**

DEFENDANT

AFFIDAVIT

I, Daryl Sands, of Edmonton, Canada but from time to time residing in Grand Anse in the parish of Saint George **MAKE OATH** and say as follows:

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1. I am a former Partner with PricewaterhouseCoopers LLP and a former officer of PricewaterhouseCoopers Inc. (“PWC”). I am a member of the Canadian Institute of Chartered Accountants, a member of the Canadian Association of Insolvency Restructuring Practitioners and a Licensed Trustee in Bankruptcy.
2. I was appointed Controller (“Controller”) of Bank Crozier Limited (the “Bank”) of July 31, 2002, by the Honorable Anthony Boatswain, Minister of Finance under section 20 of the *Offshore Banking Act, 1996* (“Act”) and as such I have personal knowledge of the matters herein deposed, except where otherwise stated to be based on information and belief, which matters I do verily believe to be true. My appointment as Controller of Bank was extended until August 14, 2003.
3. This affidavit made in support of the Summons dated the 8th December 2005 for an order to stay or discharge the Consent Order of Justice Davidson Baptiste made on the 24th November, 2005 (the “Consent Order”) whereby funds held in RBTT Bank Grenada savings account number 7669948 for the benefit of the creditors of Bank Crozier Limited (Grenada) (in Liquidation) were ordered to be paid to Bank Crozier international St. Lucia and Bank Crozier Limited in Liquidation. A true copy of the Consent Order is now produce and marked Exhibit “DS 1”.
4. I accepted the appointment from the Honorable Minister of Finance as Controller of the Bank subject to the provision of the Act (Section 20 (1) (v)) which provide that my cost acting as Controller are expense of the Bank. In addition, my appointment as Controller is with “like power of a receiver appointed under the *“Bankruptcy Act”* and I have been advised by legal Counsel that, as such, I am entitled to an indemnity for all my cost and expenses (incurred during the course and within the scope of my duties) out of the assets of the Bank in priority to the general body of creditors, subject however to prior secured interests. It was on this basis that I accepted my appointment as Controller.
5. During my tenure as Controller three actions were filed against me. The first, on May 21, 2003, Claim No. GDA HCV 2003/0220 was file against Bank Crozier, Daryl

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Sands (the Defendant herein) and the Minister of Finance by Carla Belle Limited (“Carla Bella”), alleging various breaches of duty and negligence by me as Controller during my mandate. Carla Bella also obtained an injunction on May 21, 2000 freezing 1.4 million Euros in the accounts of the Controller. The injunction subsequently expired.

6. In the second action, issued on May 30, 2003, Grenville Winslow Phillips, Controller of Bank Crozier International Limited (“BCIL”), commenced a lawsuit against me as Controller of the Bank in Claim No. GDA HCV 2003/0028 and obtained an injunction. As a result of the BCIL injunction, which was extended on June 16, 2003, I was prohibited from removing from jurisdiction US\$3,500,000 of the Bank’s assets under my charge as Controller of the Bank.

7. Sometime thereafter on April 13 2005 Carla Bella Commenced another action in the Court of Queen’s Bench in Alberta Canada against PricewaterhouseCoopers LLP, PricewaterhouseCoopers (WI) Inc. and me. A true copy of the Alberta claim is now produced and marked Exhibit “DS 2”.

8. As a consequence of these three actions, all of which are against me in my capacity as a Controller appointed under the Act, I have had to incur and continue to incur considerable legal costs in Grenada and in Canada. Attorneys acting on my behalf have filed Defense in both the Carla Bella and BCIL claims and the vigorous defense of these claims continues.

9. Based on my investigation and inspection of certain documents for the Bank and BCIL, in my capacity as Controller of Bank, I have determined that Peter Johansson and Olof Holgstrom were shareholders of both the Bank and BCIL. In addition, based on my investigation, it is my opinion, that Peter Johansson was at all material times the controlling mind behind both the Bank and BCIL.

10. The relationship which existed between the Bank and BCIL was one of an ordinary business relationship between correspondent banks, expect that the two

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institutions were subject to common ownership and control and are by definition related and associated corporations. The Bank never held trust accounts for or on behalf of BCIL as confirmed to me by Peter Johansson. There was no agreement, understanding or instructions that funds received by the Bank on behalf of BCIL would be held in specially designated accounts with funds of other customers in specific currency accounts and the relationship between the Bank and BCIL was at all material times akin to an ordinary customer banker relationship and such funds could not be deemed in any way or at all to be property in trust.

11. Throughout the period of time that a Controller was in place in respect of the Bank, BCIL continued to make regular deposits to and withdrawals from accounts maintained by the Bank, up to and including 24th April, 2003. In addition, given the related/associated relationship between the Bank and BCIL, management of BCIL had full and complete knowledge of the appointment of a Controller and the fact that the funds deposited by BCIL were not being treated as trust funds.

12. By order of this Honorable court entered July 24, 2003 the Bank was ordered to be wound-up under the provisions of the Act, the *International Companies Act* and the *Companies Act* of the laws of Grenada, and Garvey Louison was appointed liquidator of the Bank ("Liquidator").

13. On July 25, 2003, Marcus A Wide and David Holukoff acting as my agents met with the Liquidator to deliver up possession of the Bank's premises and its SWIFT card. They took this opportunity to advise the Liquidator on the nature of the Carla Bella and BCIL lawsuits, my continuing indemnity from the Bank's estate and my resulting claim to a security interest over all assets of the Bank in support of that indemnity. The Liquidator indicated the matter of the said security was something beyond his authority and that it would have to be resolved by the Court, A copy of the letter dated July 28, 2003 from my self to the Liquidator is now produced and marked Exhibit "DS3".

14. On August 22m 2003 an Order was made that RBTT (Grenada) Limited ("RBTT") allow the Liquidator maintaining a deposit between the accounts in the sum of

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US\$5 million, until the discharge of the injunctions in the Carla Bella and BCIL claims. It appears that on the authority of this Order, the accounts held in the name of the Controller at RBTT were closed and the monies therein transferred to the accounts of the Liquidator. A copy of the said Order is now produced and marked Exhibit "DS4".

15. Due to the fact that the liquidator was not prepared to be substituted in the actions for the Controller, nor was he prepared to give me an indemnity whilst the actions continued against me, on October 30, 2003, I applied to the High Court of Justice pursuant to Section 398(3) of the *Companies Act*, 1994, No.35, for the directions and orders concerning, inter alia, my obligations in view of the terms of the BCIL injunction, my entitlement to indemnification by the estate of the Bank and my ongoing security interest in the assets of the Bank in support of such indemnity.

16. In a written decision made by Pemberton J. on the 17th day of November 2003, the High Court of Justice dismissed my application. On the 2nd day of December 2003, I sought and obtained leave from the High Court of Justice to appeal the decision of 17th November, 2003. The appeal was scheduled to be heard by the Court of Appeal during the week of December 5, 2005, but has been adjourned and will be heard on February 20, 2006.

17. As at the date of this affidavit, claim No. GDA HCV 2003/0220 filed by Carla Bella and Claim No. GDA HCV 2003/0027 filed by BCIL and the claim filed by Carla Bella in Alberta against me in my capacity as Controller remains outstanding. In Claim No. GDA HCV 2003/0220 euros 1,400,000.00 together with damages for loss of business have been claimed; whilst in the Alberta suit damages in the sum of CAN \$2,216,606.00 together with CAN \$9,476,2200.00 special damages. IN BCIL the Claimant has sought a declaration that the sum of \$6,792,596 USD is the property of the claimant Bank. I am advised by Counsel and verily believe that Carla Bella claim is at the care management stage, while the BCIL remains stayed, leave to continue having been denied by the Court on 28th July, 2005.

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18. I have been advised by Legal Counsel that on 29th November, 2005, Counsel become aware of the Consent Order in this matter between BCIL and the Liquidator. Notice of the Application nor any affidavit setting out the grounds on which this Consent Order was being entered to be a party to this action. Furthermore no order was ever made for my removal as a party to this action nor was the Liquidator ever substituted as a party in this action although the Liquidator was well aware of my claim as set out in Exhibit "DS3" and which is the subject of an Appeal.

19. Based on my assertion above that there is no documented operation of separate trust accounts or segregated accounts maintained for or on behalf of BCIL by the Bank, BCIL's lawsuit against this deponent in my capacity as Controller of Bank Crozier (i.e. claim No. GDA HCV 2003/0028), if so heard, has no reasonable prospect of success. Therefore, if the Court were to allow the proposed settlement between the Liquidator and BCIL as contained in the Consent Order, the Court would inadvertently be granting a related/associated company which is also in liquidation a preference over the payment contemplated under the Consent Order is a fraudulent preference within the meaning of section 458 of the Companies Act.

20. In addition, any determination by this Honorable Court which results in any dissipation or distribution estate assets will undermine my proprietary claim to an indemnity from all of the assets of Bank, which right I assert pre-existed the Liquidation, and will in essence pre-judge the matter of my proprietary interest, which is the subject matter before the Court of Appeal.

21. Further, with respect of the above matter which is currently before the Court of Appeal, the defendant, Garvey Louison in his capacity as Liquidator of the Bank, is fully aware of my proprietary claim to all the assets of Bank, from which he now wishes to favor a preferential settlement on the estate of BCIL.

22. Based on the failure of the Liquidator to disclose to the Court the extent action now before the Court, and the fact the known claim and expenses currently exceed the

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funds held in the Liquidator's bank accounts, coupled with the fact of the Controller's claim to an indemnity from those funds, and the Controller's assertion that BCIL's claim of trust funds in the estate of Bank Crozier is without merit, I firmly believe that the Liquidator is attempting to mislead this Honorable Court into granting him an order he is otherwise not entitled to. Such an order constitutes a fraudulent preference under the Companies Act and I therefore pray for the Consent Order to be stayed or in the alternative discharge.

23. I make this affidavit in support of an application to have the Consent Order stayed or discharged and fro no improper purpose.

SWORN TO at my Office int the)
City of St. George;s this 08th)
Day of December, 2005)

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This Affidavit is filed by Seon & Associates, Juris Chambers, Lucas Street, St.George's